IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

Writ Petition No. 3795 of 2007

Kailash Laxman Shedage ..Petitioner

vs.

Vasant Laxman Shedage ..Respondent

Shri N.R.Patil for petitioner
Shri N.V.Gangal for respondent.

CORAM: S.C.DHARMADHIKARI J.
4th **July, 2007**

P.C.

1. The petitioner is aggrieved by the order passed by the Trial Court on an interim application which has been filed in the counter claim of the petitioner/defendant in Special Civil Suit No.5 of 2004.

2. The suit is for possession on the basis of title and counter claim of the petitioner is to the effect that the petitioner is entitled to undivided 1/3rd share in the property and accordingly a declaration be made in his favour.

3. The Trial Court, in my opinion, at this prima facie stage, has rightly observed that until and unless the counter claim which is placed for consideration of the Trial Court succeeds or some material is produced to

establish the ownership of the petitioner in the property or the documents in respect of the share as demaned, it will not be possible to grant any relief much less the relief of temporary injunction.

4. In my view, the Trial Court was right that on all the three counts, namely, prima facie case, balance of conveniene and irreparable loss, no case is made out by the petitioner/defendant. There is no merit in the writ petition which is accordingly rejected.

5. However, it is clarified that all observations in the order of the TrialCourt are for the purpoe of disposal of the interim application and shall not in any manner influence the Trial Court while deciding the suit and the counter claim which shall be done on their own merits and in accordance with law.

(S.C.DHARMADHIKARI J.)